

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SCOTT PANETTI,
Petitioner

V.

**LORIE DAVIS,
Director, Texas Department of
Criminal Justice, Correctional
Institutions Division
Respondent.**

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Case No. A-04-CA-042-SS

**PETITIONER'S MOTION FOR
NUNC PRO TUNC APPOINTMENT OF COUNSEL**

On August 22, 2017, after the Fifth Circuit remanded Petitioner Scott Panetti's case for further proceedings, *Panetti v. Davis*, 863 F.3d 366, 378 (5th Cir. 2017), this Court granted the motion for appointment of counsel that Mr. Panetti had filed nearly three years earlier when he was facing a December 3, 2014 execution date. DE 187 at 2. The Fifth Circuit unanimously held that this Court had erred in denying Mr. Panetti appointed and compensated counsel under 18 U.S.C. § 3599 to assist him in raising a *Ford* claim in federal court *and* state court in 2014. *Id.* at 375; *see id.* at 379-80 (Owen, J., concurring in part and dissenting in part); *see also Battaglia v. Stephens*, 824 F.3d 470, 474 (5th Cir. 2016).

On October 6, 2014, the day the United States Supreme Court denied Mr.

Panetti's petition for writ of certiorari, *Panetti v. Stephens*, 135 S. Ct. 47 (2013), undersigned counsel Gregory W. Wiercioch began working on a new claim that Mr. Panetti is presently incompetent to be executed. Mr. Wiercioch ultimately obtained thousands of pages of records from the Texas Department of Criminal Justice and filed numerous motions in the state trial court, including motions for stay of execution, appointment of counsel, and funds to hire a mental health expert and an investigator. He also prepared for and participated in a lengthy telephonic hearing in the state trial court, consulted with an expert, and filed an appeal of the trial court's denial of his motions in the Texas Court of Criminal Appeals. When the Court of Criminal Appeals affirmed the trial court's rulings, undersigned counsel filed motions for stay of execution, appointment of counsel, and funding for experts and investigators in this Court.

Undersigned counsel's non-profit law firm, Texas Defender Service, did not receive a penny for the services Mr. Wiercioch provided to Mr. Panetti in state court and in this Court. As the Fifth Circuit unanimously recognized, Mr. Panetti was entitled to compensated counsel for the work undersigned counsel performed on his behalf in state and federal court in 2014.

PRAYER FOR RELIEF

Mr. Panetti asks this Court to appoint Mr. Wiercioch *nunc pro tunc* to October 6, 2014. Mr. Panetti also asks this Court to allow Mr. Wiercioch to submit an interim bill for services and expenses covering his uncompensated representation of Mr. Panetti in 2014.

A proposed order is attached for the Court's convenience.

Respectfully Submitted,

/s/ Gregory W. Wiercioch
Texas Bar No. 00791925

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Counsel for Petitioner, Scott Panetti

CERTIFICATE OF SERVICE

I certify that on this 15th day of September 2017, I electronically filed the foregoing pleading with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case filing system. A "Notice of Electronic Filing" was sent to Counsel for Respondent at the following e-mail address:

Tina Miranda
Assistant Attorney General
Tina.Miranda@oag.texas.gov

/s/ Gregory W. Wiercioch

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O R D E R

This Court appoints Gregory W. Wiercioch *nunc pro tunc* to October 6, 2014, to represent Petitioner in the proceedings to determine his competency for execution under *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quartermann*, 551 U.S. 930 (2007). Mr. Wiercioch may file an interim bill for services and expenses covering the uncompensated period of his representation of Petitioner in 2014.

Entered this ____ day of _____, 2017.

HON. SAM SPARKS
U.S. DISTRICT COURT JUDGE